

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**JOSEPH VAN LOON *et al.*,**

**Plaintiffs,**

**v.**

**DEPARTMENT OF TREASURY *et al.*,**

**Defendants.**

Civil Action No. 1:23-cv-00312-RP

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**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO PRECLUDE PROPOSED  
AMICUS FILING AS UNTIMELY**

Plaintiffs have filed a response to Defendants' motion to preclude a proposed amicus filing as untimely. *See* ECF No. 60 (Pls.' Resp.). Because the proposed amicus brief—along with three other amicus filings so far—was in support of Plaintiffs' motion for partial summary judgment, Defendants did not attempt to meet and confer with Plaintiffs, but only with proposed amicus the Electronic Frontier Foundation (EFF). Defendants regret this error, and had Plaintiffs reached out to Defendants regarding the failure to meet and confer, Defendants would have filed a new version of their motion reflecting Plaintiffs' position, and obviated any need for Plaintiffs' response.

The substance of Plaintiffs' opposition is that the motion is premature. But the goal of the motion is to allow Defendants sufficient opportunity to respond to EFF's amicus brief, if leave to file is granted. If Defendants had waited to file their motion until after EFF had filed its motion for leave, it would have obviated the whole point of the motion, since EFF has proposed filing its motion for leave a week after Defendants' opposition brief is due, which would prejudice Defendants.

Plaintiffs note that, in a related action in Florida, the court denied a motion for a protective order that sought to enforce a court-imposed deadline on the parties to seek leave to supplement the administrative record. *See* Pls.’ Resp. at 2 n.\* (citing *Coin Center v. Yellen*, No. 22-20375 (N.D. Fla. Mar. 7, 2023), Dkt. 27 at 1–2). Although the Court denied that motion as premature, it “agree[d] with the thrust of Defendants’ motion” that Plaintiff had not timely moved for leave to supplement the record, and it accordingly set an accelerated deadline for Plaintiffs to file their motion for leave. *Coin Center*, Dkt. 27 at 2 (“The Initial Scheduling Order contemplated that any issues with the administrative record would be resolved or brought to the Court’s attention by yesterday. Ideally, a motion to supplement the administrative record would have been filed by then as well.”). If anything, the relief sought in the present motion is similar to what the *Coin Center* court ordered, because Defendants have requested that the Court require EFF to file its amicus brief by Tuesday, April 25, 2023.

The Court should grant Defendants’ motion.

Dated: April 24, 2023

Respectfully Submitted,

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